

REMARKS

Prior to entry of this paper, Claims 1-16, 18-22, 25-40, 42, 45, and 54-75 were pending. In response to the Office Action mailed January 31, 2006, claims 69 and 73 have been canceled and new claims 76-77 have been added. For the reasons discussed in detail below, Applicant submits that the pending claims are patentable over the art of record and respectfully request that the Examiner pass this application to issue.

Elections/Restrictions

The Office Action further argues that claims 69- 71 and 73-75 are directed to patentably distinct species of the claimed elected invention. Therefore, the Office Action has required under 35 U.S.C. §121 that the Applicant elect a single disclosed species for prosecution from the described species 1A (claims 69 and 73), species 1B (claims 70 and 74), and species 1C (claims 71 and 75).

In order to be fully responsive, Applicant hereby provisionally elects, with traverse, species 1B that includes claims 70 and 74. In addition, Applicant cancels claims 69 and 73 and adds new claims 76-77.

Applicant respectfully submits that the Office Action misrepresents the claims of 70, 71, 74, and 75 as being distinct species of the claimed elected invention. Claims 70 and 74 are directed towards a utility function that is determined based on a regression analysis. However, claims 71 and 75 are directed towards a utility function that represents at least one of a cost or a benefit. Thus, claims 70 and 74 claim how to determine a utility function while 71 and 75 claim what the utility function may represent. Thus, in one embodiment, a utility function that is determined by a regression analysis may result in a utility function that represents a cost or a benefit. Therefore, for at least this reason, claims 70, 71, 74, and 75 are not mutually exclusive. Thus, the restriction is improper and should be withdrawn.


Moreover, new claims 76 and 77 claim that the regression analysis of claim 70 and 74, respectively, employs at least one constant. Thus, it is clear that claims 76 and 77 should also not be restricted. In light of the amendments and explanation, Applicant respectfully submits that the restriction requirement is now moot and should be withdrawn.

CONCLUSION

By the foregoing explanations, Applicant believes that this response has responded fully to all of the concerns expressed in the Office Action, and believes that it has placed each of the pending claims in condition for immediate allowance. Accordingly, the Examiner is respectfully requested to pass this application to issue. Should any further aspects of the application remain unresolved, the Examiner is invited to telephone applicant's attorney at the number listed below.

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Respectfully submitted,

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